

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANGELA OLEJNICEK, :
Plaintiff, : Case No. 3:12cv00261
vs. : District Judge Walter Herbert Rice
Chief Magistrate Judge Sharon L. Ovington
KROGER, *et al.*, :
Defendants. :
=====

REPORT AND RECOMMENDATIONS¹

On May 17, 2013, Plaintiff was Ordered to file a notice with the Court on or before June 3, 2013, indicating whether she obtained new counsel in this case or wished to represent herself *pro se*. (Doc. #13). To date, she has not responded.

On June 3, 2013, Defendants filed a Motion for Judgment on the Pleadings seeking dismissal of her Complaint. The Court issued a Notice to Plaintiff on June 18, 2013, indicating she had no later than July 8, 2013, to file a response to Defendants' Motion. (Doc. #15). To date, she has not filed a response.

On July 19, 2013 Plaintiff was Ordered to inform this Court on or before August 9, 2013 why she has not filed a notice indicating whether she obtained new counsel or wished to proceed *pro se*. Plaintiff was cautioned that “[f]ailure to respond may result in dismissal of this case for failure to prosecute.” (Doc. #16 at 1) (emphasis in original).

¹ Attached hereto is NOTICE to the parties regarding objections to this Report and Recommendations.

The Court also provided her with a second notification of Defendants' Motion for Judgment on the Pleadings.

Plaintiff did not respond to this Court's Order to Show Cause, nor did she file any response to Defendants' Motion for Judgment on the Pleadings. Accordingly, the Court finds that Plaintiff has engaged in a clear pattern of delay by not filing a response to this Court's Order to Show Cause. Absent such an explanation, and in light of the above circumstances, Plaintiff's clear pattern of delay warrants dismissal of this case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991); *Harris v. Callwood*, 844 F.2d 1254, 1256 (6th Cir. 1988).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's Complaint be dismissed pursuant to Fed. R. Civ. P. 41(b); and,
2. The case be terminated on the docket of this Court.

August 12, 2013

s/Sharon L. Ovington
Sharon L. Ovington
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen (14) days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen (17) days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See, United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).